

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3

4 In the Matter of:  
5

ELECTRONIC APPLICATION OF )  
BIG RIVERS ELECTRIC CORPORATION ) Case No.  
FOR ANNUAL REVIEW OF ITS MRSM ) 2022-00028  
CHARGE FOR CALENDAR YEAR 2021 )

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10 **MOTION OF BIG RIVERS ELECTRIC CORPORATION**  
11 **FOR CONFIDENTIAL PROTECTION**  
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13 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the  
14 Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR  
15 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain  
16 information Big Rivers is providing in its Application submitted  
17 contemporaneously herewith in the above-styled matter. The information for  
18 which Big Rivers seeks confidential treatment is hereinafter referred to as the  
19 “*Confidential Information.*”

20 2. The Confidential Information consists of customer specific usage  
21 data and billing information contained in the Direct Testimony of Paul G. Smith  
22 attached as Exhibit B to the Application.

23 3. Pursuant to the Commission’s March 24, 2020, Order in *In the*  
24 *Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-*  
25 *19*, Case No. 3 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the

1 Confidential Information highlighted with transparent ink, printed on yellow  
2 paper, or otherwise marked “CONFIDENTIAL,” is being filed with this motion by  
3 electronic mail. A copy of those pages, with the Confidential Information  
4 redacted, is being electronically filed with the Application accompanying this  
5 motion.

6 4. A copy of this motion with the Confidential Information redacted has  
7 been served on all parties to this proceeding through the use of electronic filing.  
8 807 KAR 5:001, Section 13(b).

9 5. If and to the extent the Confidential Information becomes generally  
10 available to the public, whether through filings required by other agencies or  
11 otherwise, Big Rivers will notify the Commission and have its confidential status  
12 removed. 807 KAR 5:001 Section 13(10)(b).

13 6. As discussed below, the Confidential Information is entitled to  
14 confidential treatment based upon KRS 61.878(1)(a) and/or KRS 61.878(1)(c)(1).  
15 807 KAR 5:001 Section 13(2)(a)(1).

16 **A. INFORMATION ENTITLED TO CONFIDENTIAL TREATMENT**  
17 **UNDER KRS 61.878(1)(a)**

18 7. KRS 61.878(1)(a) protects “[p]ublic records containing information of  
19 a personal nature where the public disclosure thereof would constitute a clearly  
20 unwarranted invasion of personal privacy.”

21 8. The Confidential Information in the Direct Testimony of Paul G.  
22 Smith reveals the power usage and billing information of an individual large

1 industrial retail customer on the Big Rivers system, Nucor Corporation. Because  
2 this customer is not a party to this proceeding, publicly revealing such  
3 information would constitute a clearly unwarranted invasion of personal privacy.  
4 Moreover, on March 9, 2021, the Commission granted confidential treatment to  
5 Nucor Corporation’s 2020 power usage data and billing information for an  
6 indefinite period in Case No. 2021-00061, *In the Matter of: Electronic Application*  
7 *of Big Rivers Electric for Annual Review of its MRS M Charge for Calendar Year*  
8 *2020* (“Big Rivers 2020 MRS M Case”), finding “the designated material is  
9 generally recognized as private, confidential, or proprietary, it therefore meets the  
10 criteria for confidential treatment and is exempted from public disclosure  
11 pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1), and KRS 61.878(1)(2)(1).”  
12 As such, Big Rivers requests confidential treatment for the customer-specific  
13 usage data and billing information in order to protect Nucor Corporation’s private  
14 usage information.

15 **B. INFORMATION ENTITLED TO CONFIDENTIAL TREATMENT**  
16 **UNDER KRS 61.878(1)(c)(1)**

17 9. Under the Kentucky Open Records Act, the Commission is entitled  
18 to withhold from public disclosure “records confidentially disclosed to an agency  
19 or required by an agency to be disclosed to it, generally recognized as confidential  
20 or proprietary, which if openly disclosed would permit an unfair commercial  
21 advantage to competitors of the entity that disclosed the records.” KRS

1 61.878(1)(c)(1). Public disclosure of the Confidential Information in the Direct  
2 Testimony of Paul G. Smith would permit such a result as discussed fully below.

3 10. Section I below explains that Big Rivers operates in competitive  
4 environments in the wholesale power market and in the credit market. Section II  
5 below shows that the Confidential Information entitled to protection under KRS  
6 61.87(1)(c)(1) is generally recognized as confidential or proprietary. Section III  
7 below demonstrates that public disclosure of the Confidential Information would  
8 permit an unfair commercial advantage to Big Rivers' competitors.

9 **SECTION I**

10 **Big Rivers Faces Actual Competition**

11 11. As a generation and transmission cooperative, Big Rivers competes  
12 in the wholesale power market. This includes not only the short-term bilateral  
13 energy market, the day-ahead and real time energy and ancillary services  
14 markets, and the capacity market to which Big Rivers has access by virtue of its  
15 membership in Midcontinent Independent System Operator, Inc. ("*MISO*"), but  
16 also forward bilateral long-term agreements and wholesale agreements with  
17 utilities and industrial customers. Big Rivers' ability to successfully compete in  
18 the market is dependent upon a combination of its ability to: 1) obtain the  
19 maximum price for the power it sells, and 2) keep its cost of production or  
20 purchase as low as possible. Fundamentally, if Big Rivers' cost of producing or  
21 purchasing a unit of power increases, its ability to sell that unit in competition  
22 with other utilities is adversely affected.



1 insight into their power needs or the prices at which they are willing to buy or sell  
2 power.

3 14. Information such as this which bears upon a company's detailed  
4 inner workings is generally recognized as confidential or proprietary. *See, e.g.,*  
5 *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995)  
6 (“It does not take a degree in finance to recognize that such information  
7 concerning the inner workings of a corporation is ‘generally recognized as  
8 confidential or proprietary’”); *Marina Management Services, Inc. v.*  
9 *Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) (“These are  
10 records of privately owned marina operators, disclosure of which would unfairly  
11 advantage competing operators. The most obvious disadvantage may be the  
12 ability to ascertain the economic status of the entities without the hurdles  
13 systematically associated with acquisition of such information about privately  
14 owned organizations”).

15 15. Moreover, in addition to the Commission's previously cited Order in  
16 Big Rivers' 2021 MRSM case, the Commission has previously granted confidential  
17 treatment to such information in other cases. *See, e.g., In the Matter of: Riverside*  
18 *Generating Company, LLC v. Kentucky Power Company*, P.S.C. Case No. 2017-  
19 00472, Order (May 16, 2019) (granting confidential treatment to customer specific  
20 information relating to purchases and transmission of electricity for an indefinite  
21 period); *In the Matter of Electronic Application of Big Rivers Electric Corporation*  
22 *and Meade Couty Rural Electric Cooperative Corporation for (1) Approval of*

1 *Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff,*  
2 P.S.C. Case No. 2019-00365, Order (Sept. 30, 2020) (granting confidential  
3 treatment to the terms of Nucor Corporation’s retail electric service agreement  
4 and power purchase agreements between Big Rivers and solar developers).

5 16. The Confidential Information is not publicly available, is not  
6 disseminated within Big Rivers except to those employees and professionals with  
7 a legitimate business need to know and act upon the information, and is not  
8 disseminated to the others without a legitimate need to know and act upon the  
9 information.

### 10 **SECTION III**

#### 11 **Disclosure of the Confidential Information Would Permit an Unfair** 12 **Commercial Advantage to Big Rivers’ Competitors**

13 17. Public disclosure of the Confidential Information will adversely  
14 affect Big Rivers in several respects.

15 18. Disclosure of the Confidential Information would afford Big Rivers’  
16 competitors an unfair commercial advantage. As discussed above, Big Rivers  
17 faces actual competition in the power markets and in the credit markets. It is  
18 likely that Big Rivers would suffer an economic disadvantage in negotiating  
19 future transactions and thus competitive injury if the Confidential Information  
20 were publicly disclosed, and the information should therefore be subject to  
21 confidential treatment.

1           19.    In P.S.C. Case No. 2003-00054, the Commission implicitly accepted  
2 the Union Light, Heat, and Power Company’s argument that the bidding  
3 contractors would not want their bid information publicly disclosed, and that  
4 disclosure would reduce the contractor pool available to ULH&P, which would  
5 drive up ULH&P’s costs, hurting its ability to compete with other gas suppliers.  
6 *In the Matter of Application of the Union Light, Heat and Power Company for*  
7 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003).  
8 Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky  
9 Supreme Court found that without protection for confidential information  
10 provided to a public agency, “companies would be reluctant to apply for  
11 investment tax credits for fear the confidentiality of financial information would  
12 be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d  
13 766, 769 (Ky. 1995). In Big Rivers’ case, if confidential treatment of the  
14 confidential customer specific power usage data and billing information is denied,  
15 potential counterparties on future special contracts or future economic  
16 development prospects would know that their confidential information would be  
17 publicly disclosed. Because many companies would be reluctant to have such  
18 information disclosed, public disclosure of the Confidential Information could  
19 disincentive other companies from locating in Big Rivers’ service area, reducing  
20 Big Rivers’ revenues (which could then drive up the cost of credit to Big Rivers)  
21 and impairing its ability to compete in the wholesale power market.



